

*A Partnership Including  
Professional Corporations*  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
202-756-8000  
Facsimile 202-756-8087  
www.mwe.com

**Christine M. Gill**  
Attorney at Law  
cgill@mwe.com  
(202) 756-8283

Boston  
Chicago  
Düsseldorf  
London  
Los Angeles  
Miami  
Milan  
Munich  
New York  
Orange County  
Rome  
San Diego  
Silicon Valley  
Washington, D.C.

## **McDERMOTT, WILL & EMERY**

April 5, 2004

### Via Email

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**Re: Southern LINC; 800 MHz Public Safety Interference Proceeding, WT 02-55;  
Ex Parte Presentation**

Dear Chairman Powell:

Southern Communications Services, Inc., d/b/a/ Southern LINC ("Southern LINC"), wishes to reiterate with urgency that Southern LINC's 800 MHz network must receive non-discriminatory treatment should the Commission decide to move forward with some form of rebanding in this proceeding. Southern LINC has briefed the Commission at length on the legal and policy reasons why competitors in the 800 MHz band must be afforded non-discriminatory treatment. Because Southern LINC has an extensive customer base, rebanding will affect its operations dramatically. Southern LINC urges the Commission to adopt the following approach:

**Southern LINC must be allowed to operate in the "cellularized" portion of the band however that is defined.** Southern LINC cannot operate in a band that does not have the same regulatory requirements as those applied to other commercial operators. If the Commission decides to establish the cellularized band *above 861 MHz*, Southern LINC must be allowed to relocate its operations into this portion of the band.

- Attached is a chart showing the amount of spectrum needed for relocation of Southern LINC's operations above 861 MHz in Birmingham, Atlanta and Pensacola.<sup>1</sup>

---

<sup>1</sup> These charts indicated that there would be a shortfall of spectrum when trying to accommodate both Southern and Nextel above 861 MHz.

**Southern LINC must be allowed to relocate to clear, contiguous spectrum throughout its operating area.** If Nextel is permitted to relocate to contiguous spectrum, as opposed to the current situation where it is interleaved with other systems, Southern LINC must be allowed to relocate its channels to contiguous spectrum, preferably beginning at the lowest channel identified for cellularized operations (e.g. beginning at 861 MHz).

**The spectrum must be cleared of incumbents.** If Nextel is allowed to relocate to clear channels free of incumbents, Southern LINC likewise must be allowed to relocate to channels in the cellularized band which are cleared of incumbents.

**Reimbursement.** Nextel must, at its own expense, relocate out of the channels that Southern LINC would occupy in any new cellularized band. Likewise, Nextel must pay to relocate any non-Nextel incumbents that are operating in bands into which Southern LINC would move.

- **Nextel should reimburse Southern LINC's costs to relocate to the new cellularized band.** This is consistent with the overall approach of requiring Nextel to reimburse the relocation expenses of everyone in the band. But for Nextel's interference-causing operations in this band, Southern LINC would not have to incur the substantial cost of retuning. There is no rationale for restricting certain parties, such as Southern LINC, from qualifying for reimbursement of these expenses. Furthermore, *Nextel is being completely reimbursed for every dollar it is spending*. Nextel is demanding that the "value" of any relocation costs it pays be counted to justify the FCC giving Nextel 10 MHz of spectrum at 1.9 GHz. Putting aside the questionable legal basis for Nextel's bargain, under Nextel's math, the cost of Southern LINC's relocation would simply be additional "value" that Nextel is contributing towards its acquisition of 1.9 GHz spectrum. Thus, payment of Southern LINC's relocation costs will have no adverse impact on Nextel.

Without question, Nextel would be compensated for its \$850 million contribution to relocation costs by receiving 1.9 GHz spectrum, which is valued at far more than \$850 million. Nextel also insists that the following "costs," which it would incur as a result of rebanding, be added to the "value" of what it is "paying" for the 1.9 GHz spectrum it would receive:<sup>2</sup> (1) to add filters to its system, \$150 million; (2) to accept restrictions on use of its spectrum at 861-863 MHz, \$575 million; and (3) to retune its system, \$400 million. Southern LINC would have the same expenditures, *i.e.*, the cost of filters, retuning its system, and frequency restrictions at 861-863 MHz. However, Southern LINC would receive *nothing* in return for having to incur these costs. Compensating Southern LINC for its relocation expenses *is a bare minimum* in equitable treatment.

**Accounting for spectrum in making the transition above 861 MHz.** The Commission must ensure the "exchange rate" for spectrum for all concerned is non-discriminatory. Southern

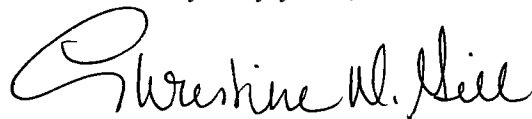
---

<sup>2</sup> See, Ex Parte Presentation of Nextel in WT Docket No. 02-55, filed on March 15, 2004.

LINC spectrum must be counted in the same manner as other parties who would be relocated including Nextel and Nextel Partners. Nextel and Nextel Partners cannot be allowed to trade spectrum on one basis while all other parties are forced to accept replacement spectrum on another, less favorable, basis.

Southern LINC respectfully requests the Commission to take these points into consideration when it moves towards a decision in this important proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christine M. Gill". The signature is fluid and cursive, with a large initial "C" and "G".

Christine M. Gill

Attachment

cc: Commissioner Kathleen Q. Abernathy  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
John B. Muleta  
Edmond J. Thomas  
Michael J. Wilhelm  
Marlene H. Dortch, Secretary